

Honorable Judge John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

ABDIWALI MUSSE,)	
)	
Plaintiffs,)	No. 2:18-cv-01736-JCC
)	
vs.)	
)	
WILLIAM HAYES, Director of King County)	DEFENDANTS' BRIEF RE:
Department of Adult and Juvenile Detention,)	DEPOSITION OF GORDON
in his individual and official capacity, J. DOES)	GAYNOR
ONE THROUGH FIVE, in their individual)	
and official capacity, and KING COUNTY, a)	
county of the State of Washington)	
)	
Defendants.)	

I. INTRODUCTION

Defendants William Hayes and King County (collectively "King County Defendants") are responding to a minute order from the Honorable John C. Coughenour, that requested briefing regarding the deposition of Gordon Gaynor. For the reasons outline below, the King County Defendant believe the issue is not properly before this Court at this time and is moot.

II. STATEMENT OF FACTS

On August 12, 2020, plaintiff sent an email requesting to depose Officer Gordon Gaynor, who was the Acting Sergeant on the night of the incident. Declaration of Jerry Taylor ¶2. Counsel for the defendants responded stating that he would contact Officer

1 Gaynor and request his availability. *Id.* On September 1, 2020, defense counsel emailed
 2 plaintiff's counsel to inform him that Officer Gaynor was out on leave since June and it
 3 was unclear if he would be returning to work. *Id.* at ¶3. Plaintiff's counsel followed up
 4 asking for additional information regarding Officer Gaynor. *Id.* On September 8, 2020,
 5 defense counsel stated he would follow-up with Human Resources (HR) to confirm what
 6 additional information could be disclosed regarding Officer Gaynor's medical condition.
 7 *Id.* at ¶4. On September 21, 2020, defense counsel sent an email to plaintiff's counsel
 8 informing him that Officer Gaynor has no plans to return to work and that he is in the
 9 process of applying for medical separation or medical retirement from King County. *Id.*
 10 at ¶5. On September 25, 2020, plaintiff's counsel responded that the information from
 11 King County regarding Officer Gaynor's condition was insufficient and requested a
 12 discovery conference. *Id.* at ¶6. Plaintiff's counsel did not serve King County with a
 13 subpoena duces tecum or any formal discovery requests related to Officer Gaynor's
 14 medical condition. On November 6, 2020, plaintiff's counsel sent an email following the
 15 entry of this Court's order requesting briefing on this issue requesting Officer Gaynor's
 16 contact information in order to serve him with a subpoena. *Id.* at ¶7.

17 III. AUTHORITY

18 Federal Rule of Civil Procedure 30 (a)(1) authorizes a party to take the depositions
 19 of any person without leave of the court. Further, "the deponent's attendance may be
 20 compelled by subpoena under Rule 45." *Id.* If the deponent disregards the subpoena they
 21 can be held in contempt. FRCP 45 (g). The Ninth Circuit has "recognized Fed. R. Civ. P.
 22 37(a) encompasses an order to attend a deposition." *Sali v. Corona Regional Medical Center*,
 23 884. F.3d 1218 (9th Cir. 2018). In this case, defense counsel stated that based on the
 information that he received regarding Officer Gaynor's medical condition, that the
 witness could not sit for a deposition. Despite being dissatisfied with King County's
 position regarding disclosure of Officer Gaynor's medical condition, plaintiff's counsel

1 decided not to serve a deposition subpoena or file a motion to compel. Therefore, King
2 County believes the matter is not ripe for this Court's review. However, plaintiff's
3 counsel to-date has not provided any dates for Officer Gaynor's deposition. *Id.* Based on
4 Officer Gaynor's willingness to attend a deposition, King County believes this matter is
5 now moot. However, King County reserves the right to seek a protective order if before
6 or during Officer Gaynor's deposition it becomes apparent that there are issues regarding
7 his capacity.

8 DATED this 10th day of November, 2020.

9
10 DANIEL T. SATTERBERG
King County Prosecuting Attorney

11 By: /s/ JERRY L. TAYLOR
12 JERRY L. TAYLOR, WSBA #40739
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16 Attorney for King County Defendants

CERTIFICATE OF FILING AND E-SERVICE

I hereby certify that on November 10, 2020, I electronically filed the foregoing document with the Clerk of the Court using the electronic filing system and by agreement of the parties a copy was served electronically on the following:

Jay H. Krulewitch
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I declare under penalty of perjury under the laws of the United States and the State of Washington that the foregoing is true and correct.

DATED this 10th day of November, 2020.



ANGELA LINDSEY
Legal Secretary
King County Prosecuting Attorney's Office